

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

V.

AUDIBLE MAGIC CORPORATION,

Defendant.

AUDIBLE MAGIC CORPORATION,

Counterclaim Plaintiff

V.

BLUE SPIKE, LLC, BLUE SPIKE, INC.
and SCOTT A. MOSKOWITZ

Counterclaim Defendants.

Case No. 6:15-cv-584-MHS

Jury Trial Demanded

FILED UNDER SEAL

**DECLARATION OF GABRIEL RAMSEY IN SUPPORT OF
AUDIBLE MAGIC'S MOTIONS IN LIMINE**

I, Gabriel Ramsey, declare under penalty of perjury that the following is true and correct:

1. I am a partner at the law firm Orrick, Herrington & Sutcliffe, LLP (“Orrick”), counsel of record for defendants Audible Magic Corp. (“Audible Magic”) and a number of its customers accused as defendants in this case on the basis of Audible Magic’s technology. I have personal knowledge of the facts set forth in this declaration, or access to information and records allowing me to confirm these facts. If called as a witness, I could testify competently to these facts under oath.

2. Throughout the course of discovery, Audible Magic repeatedly sought discovery regarding the documentation of revenue, profits and costs, as well as formal or informal financial statements, of Mr. Moskowitz, Blue Spike, Inc. and Blue Spike, LLC, from

whom Audible Magic claims damages in this case. Audible Magic had to file two motions to compel production, and two orders issued compelling such production. Even after the court orders, the Blue Spike parties did not produce financial documentation sufficient to understand their revenue, costs, profits and losses. On a December 24, 2014, a discovery conference was held with the Special Master. At the conference, counsel for Blue Spike represented that there was no financial documentation reflecting things such as revenue, profits or costs. Audible Magic did not and does not accept that representation. Audible Magic took the position at the conference that, if there truly were no financial documents for these parties, it would agree to accept a summary of financial information. Even after the conference, no documents were forthcoming in production. It was not until January 16, 2015, on the last day of Scott Moskowitz's deposition, that Blue Spike produced a "financial summary."

3. Attached as Exhibit A to my declaration is a true and correct copy of the foregoing "financial summary," which was Exhibit 33 to the Deposition of Scott Moskowitz.

4. Attached as Exhibit B to my declaration is a true and correct copy of excerpts to the deposition of Scott Moskowitz.

5. Attached as Exhibit C to my declaration is a true and correct copy of excerpts to the deposition of Rodney Bosco.

6. Attached as Exhibit D to my declaration is a true and correct copy of excerpts of the expert report of Alan Ratliff.

7. Attached as Exhibit E to my declaration is a true and correct copy of excerpts of the expert report of Rodney Bosco.

8. Blue Spike agreed during a meet and confer during the fall of 2015 that neither party, nor any witness, shall comment on or testify about the medical conditions of any party or witness.

9. During meet and confer on June 17, 2016, the parties agreed that Blue Spike should be precluded from referring to itself as plaintiff and to Audible Magic as defendant.

10. During meet and confer on June 17, 2016, the parties have agreed that Mr. Moskowitz will not testify about the scope and meaning of the patents-in-suit beyond the scope of his deposition.

11. During meet and confer on June 17, 2016, the parties have agreed that Blue Spike shall refrain from claiming, through testimony of any witness or otherwise, that Mr. Moskowitz resides in Texas.

12. Exhibit F to my declaration are public records that indicate that as of June 2016, Mr. Moskowitz resides in Florida.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct based on my own personal knowledge.

Executed on June 17, 2016 in San Francisco, California.

A handwritten signature in black ink, appearing to read "Gabriel Ramsey", written over a horizontal line.

Gabriel Ramsey